



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,616	03/31/2001	Simon Kneec	42390.P9020	6040

7590 11/20/2006  
Michael A. DeSanctis  
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP  
Seventh Floor  
12400 Wilshire Boulevard  
Los Angeles, CA 90025-1026

EXAMINER	
BILGRAMI, ASGHAR H	
ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 11/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Communication Re: Appeal**

Application No.

09/823,616

Examiner

Asghar Bilgrami

Applicant(s)

KNEE ET AL.

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on \_\_\_\_\_ is not acceptable because:

- (a) ☐ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
- (c) ☐ the appeal fee received on \_\_\_\_\_ was not timely filed.
- (d) ☐ the submitted fee of \$\_\_\_\_\_ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$\_\_\_\_\_.
- (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on \_\_\_\_\_.

2. ☐ The appeal brief filed on \_\_\_\_\_ is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
- (c) ☐ the submitted brief fee of \$\_\_\_\_\_ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$\_\_\_\_\_.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☒ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on \_\_\_\_\_.
- (d) ☒ other: See continuation.

4. ☐ Because of the dismissal of the appeal, this application:

- (a) ☐ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration.

DAVID WILEY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

A review the file indicates that on November 21, 2005, appellants filed an Appeal Brief under the rules set forth 37CFR 5 1.192(c). However, 37 CFR 5 1.192 was abolished on September 13, 2004, and replaced by 37 CFR 5 41.37(c). Accordingly, the Appeal Brief filed on November 21, 2005 does not comply with 37 CFR 5 41.37(c). A review of the application indicates that the following sections are missing from the Appeal Brief of November 2005:

- 1) "Summary of claimed subject matter" as set forth in 37 CFR 41.37(c) (1)(v);
- 2) Grounds of rejection to be reviewed on appeal", as set forth in 37 CFR 41.37(c)(1)(vi);
- 3) "Evidence appendix", as set forth in 37 CFR 41.37(c)(1) (ix); and
- 4) "Related proceedings appendix", as set forth in 37 CFR 41.37(c) (1) (x) . A substitute brief that is in compliance with 37 CFR 41.37(c) required.

For more information on the Board's new rules see the web page entitled More Information on the Rules Practice Before the BPAI, Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/index.html>.